

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JASON CHRISTOPHER MARTINEZ,

Petitioner,

v.

16-CV-00256-RB-GJF

JOHN SANCHEZ,

Respondent.

**ORDER GRANTING MOTION TO PROCEED  
IN FORMA PAUPERIS AND TO ANSWER**

This matter is before the Court on Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody [ECF No. 1] and Application to Proceed in District Court Without Prepaying Fees or Costs [ECF No. 4]. Because it appears that Petitioner is unable to pay the filing fee pursuant to 28 U.S.C. § 1915, the Court will grant the Application to Proceed in District Court Without Prepaying Fees or Costs. Additionally, the Court has reviewed the Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The Petition names John Sanchez, the Warden at Springer Correctional Facility, and Eddy County Fifth Judicial District Court as Respondents. [ECF No. 1] However, the Eddy County Fifth Judicial District Court is not Petitioner's custodian, and therefore, is not a proper respondent in this habeas action. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (noting that "in habeas challenges to present physical confinement—'core challenges'—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held"); *Edwards v. Oklahoma*, 327 Fed. App'x 75, 76 (10th Cir. 2009) (holding that the State of Oklahoma is not a proper respondent in a habeas corpus petition brought under 28 U.S.C. § 2254 because "[a] habeas

petition must be directed toward the petitioner's custodian") (unpublished). Therefore, Eddy County Fifth Judicial District Court will be dismissed as a party to this action. Because the Petition is not otherwise subject to summary dismissal, the Court will order Respondent Sanchez to file an answer to the Petition.


**IT IS THEREFORE ORDERED** that Petitioner's Application to Proceed in District Court Without Prepaying Fees or Costs [ECF No. 4] is **GRANTED** and Petitioner may proceed without prepayment of costs or other fees or the necessity of giving security therefor;

**IT IS FURTHER ORDERED** that Respondent Eddy County Fifth Judicial District is **DISMISSED** as a party to this action;

**IT IS FURTHER ORDERED** that the Clerk of the Court is directed to forward copies of this Order and the Petition [ECF No. 1] to Respondent Sanchez and the New Mexico Attorney General;

**IT IS FURTHER ORDERED** that Respondent Sanchez answer the Petition within thirty (30) days from entry of this Order. Respondent Sanchez's answer shall advise, but is not limited to, whether Petitioner has exhausted his state court remedies as to the issues raised in the federal petition. Respondent Sanchez shall attach to his answer copies of any pleading pertinent to the issue of exhaustion which was filed by Petitioner in the sentencing court, the state district court, the state court of appeals and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Respondent Sanchez shall also attach to the answer copies of all state court findings and conclusions, docketing statements, and opinions issued in Petitioner's state court post-conviction or appellate proceedings. In the event Respondent Sanchez denies exhaustion, he shall identify the State procedures currently available to Petitioner given the nature of Petitioner's claims and their procedural history.

**IT IS SO ORDERED.**



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THE HONORABLE GREGORY J. FOURATT  
UNITED STATES MAGISTRATE JUDGE